

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

212

CRM-M-11834-2022 (O&M)

Date of Decision: 18.08.2023

SIMPLE SHARMA

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Hakam Singh, AAG Punjab.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this petition is for grant of regular bail to the petitioner in case bearing FIR No.34 dated 27.05.2021, registered under Sections 21-C and 29 of the NDPS Act, at Police Station Khem Karan, District Tarn Taran.

Learned counsel for the petitioner submits that, though, the alleged recovery effected in the present case is a commercial quantity, yet the fact remains that the petitioner has been in custody since 31.05.2021 i.e. for more than 2 years and 2 months; that co-accused, namely, Sarwan Singh, has already been granted the concession of bail; that out of total 13 prosecution witnesses, only 4 have been examined so far and that, post presentation of a supplementary challan, de novo trial will commence. He further submits that there is no other case registered and/or pending against the petitioner.

In support of his contentions, learned counsel relies upon the orders dated 01.08.2022 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.5769-2022, titled as 'Nitish Adhikary @ Bapan Vs. State of West Bengal' and dated 22.08.2022 in Special Leave to Appeal (Crl.) No.5530-2022, titled as 'Mohammad Salman Hanif Shaikh Vs. State of Gujarat'.

On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery of contraband effected in the present case, falls under commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. He further submits that material witnesses are yet to be examined and thus the petitioner be not granted the concession of regular bail.

I have heard the learned counsel for the parties.

Indisputably, extent of intoxicating contraband in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody since 31.05.2021 i.e. for more that 2 years and 2 months. Most of the prosecution witnesses are yet to be examined. Trial is unlikely to conclude any time soon. There is no other case registered or pending against the petitioner, at least of a similar nature.

The Hon'ble Supreme Court in Nitish Adhikary @ Bapan, while granting the benefit of bail to the petitioner therein, has held as under:

“The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21 (c) and 37 of the NDPS 2 Act, registered at Police

Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.

The Special Leave Petition is disposed of on the aforesaid terms.

Pending application(s), if any, shall stand disposed of.”

Further, the Hon'ble Supreme Court in Mohammad Salman Hanif Shaikh's case (supra), had held as under:-

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

18.08.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>